

Introduced by Senator Hancock

February 20, 2014

An act to add Chapter 2.9C (commencing with Section 1001.80) to Title 6 of Part 2 of the Penal Code, relating to diversion.

LEGISLATIVE COUNSEL'S DIGEST

SB 1227, as introduced, Hancock. Diversion: members of the military.

Under existing law, prosecution of an offense filed as a misdemeanor may be postponed, either temporarily or permanently, at any point in the judicial process from the point at which the accused is charged until adjudication, for the person charged to participate in a diversion program for the treatment of problem drinking or alcoholism. Additionally, prosecution may be postponed in other instances, including first-time, nonviolent felony drug offenses and for defendants with cognitive developmental disabilities.

This bill would authorize the court, with the consent of the defendant and a waiver of the defendant's speedy trial right, to postpone prosecution, either temporarily or permanently, of a misdemeanor or a felony for which a sentence would be served in a county jail if the defendant was, or currently is, a member of the United States military and if he or she may be suffering from sexual trauma, traumatic brain injury, post-traumatic stress disorder, substance abuse, or mental health problems as a result of his or her military service. The bill would authorize the defendant to be referred to services for treatment and would require the responsible agencies to report to the court and the prosecution not less than every 6 months. By increasing the duties of local county mental health authorities and local prosecutors, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.9C (commencing with Section 1001.80)
2 is added to Title 6 of Part 2 of the Penal Code, to read:

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4 CHAPTER 2.9C. MILITARY DIVERSION PROGRAM
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6 1001.80. (a) This chapter shall apply whenever a case is before
7 a court on an accusatory pleading alleging the commission of a
8 misdemeanor offense or a felony offense punishable pursuant to
9 subdivision (h) of Section 1170, and both of the following apply
10 to the defendant:

11 (1) The defendant was, or currently is, a member of the United
12 States military.

13 (2) The defendant may be suffering from sexual trauma,
14 traumatic brain injury, post-traumatic stress disorder, substance
15 abuse, or mental health problems as a result of his or her military
16 service. The court may request, using existing resources, an
17 assessment to aid in the determination that this paragraph applies
18 to a defendant.

19 (b) If the court determines that a defendant charged with an
20 applicable offense under this chapter is a person described in
21 subdivision (a), the court, with the consent of the defendant and a
22 waiver of the defendant's speedy trial right, may place the
23 defendant in a pretrial diversion program, as defined in subdivision
24 (k).

25 (c) If it appears to the court that the defendant is performing
26 unsatisfactorily in the assigned program, or that the defendant is
27 not benefiting from the treatment and services provided under the
28 diversion program, after notice to the defendant, the court shall

1 hold a hearing to determine whether the criminal proceedings
2 should be reinstituted. If the court finds that the defendant is not
3 performing satisfactorily in the assigned program, or that the
4 defendant is not benefiting from diversion, the court may end the
5 diversion and order resumption of the criminal proceedings. If the
6 defendant has performed satisfactorily during the period of
7 diversion, at the end of the period of diversion, the criminal charges
8 shall be dismissed.

9 (d) If a referral is made to the county mental health authority
10 as part of the pretrial diversion program, the county shall be
11 obligated to provide mental health treatment services only to the
12 extent that resources are available for that purpose, as described
13 in paragraph (5) of subdivision (b) of Section 5600.3 of the Welfare
14 and Institutions Code. If mental health treatment services are
15 ordered by the court, the county mental health agency shall
16 coordinate appropriate referral of the defendant to the county
17 veterans service officer, as described in paragraph (5) of
18 subdivision (b) of Section 5600.3 of the Welfare and Institutions
19 Code. The county mental health agency shall not be responsible
20 for providing services outside its traditional scope of services. An
21 order shall be made referring a defendant to a county mental health
22 agency only if that agency has agreed to accept responsibility for
23 the treatment of the defendant.

24 (e) When determining the requirements of a pretrial diversion
25 program pursuant to this chapter, the court shall assess whether
26 the defendant should be ordered to participate in a federal or
27 community-based treatment service program with a demonstrated
28 history of specializing in the treatment of mental health problems,
29 including substance abuse, post-traumatic stress disorder, traumatic
30 brain injury, military sexual trauma, and other related mental health
31 problems.

32 (f) The court, in making an order pursuant to this section to
33 commit a defendant to an established treatment program, shall
34 give preference to a treatment program that has a history of
35 successfully treating veterans who suffer from sexual trauma,
36 traumatic brain injury, post-traumatic stress disorder, substance
37 abuse, or mental health problems as a result of military service,
38 including, but not limited to, programs operated by the United
39 States Department of Defense or the United States Department of
40 Veterans Affairs.

1 (g) The court and the assigned treatment program may
2 collaborate with the Department of Veterans Affairs and the United
3 States Department of Veterans Affairs to maximize benefits and
4 services provided to the veteran.

5 (h) The period during which criminal proceedings against the
6 defendant may be diverted shall be no longer than two years. The
7 responsible agency or agencies shall file reports on the defendants
8 progress in the diversion program with the court and with the
9 prosecutor not less than every six months.

10 (i) A record filed with the Department of Justice shall indicate
11 the disposition in those cases diverted pursuant to this chapter.
12 Upon successful completion of a diversion program, the arrest
13 upon which the diversion was based shall be deemed to have never
14 occurred. The defendant may indicate in response to a question
15 concerning his or her prior criminal record that he or she was not
16 arrested or diverted for the offense, except as specified in
17 subdivision (j). A record pertaining to an arrest resulting in
18 successful completion of a diversion program shall not, without
19 the defendants consent, be used in any way that could result in the
20 denial of any employment, benefit, license, or certificate.

21 (j) The defendant shall be advised that, regardless of his or her
22 successful completion of diversion, the arrest upon which the
23 diversion was based may be disclosed by the Department of Justice
24 in response to a peace officer application request and that,
25 notwithstanding subdivision (i), this section does not relieve him
26 or her of the obligation to disclose the arrest in response to a direct
27 question contained in a questionnaire or application for a position
28 as a peace officer, as defined in Section 830.

29 (k) (1) As used in this chapter, “pretrial diversion” means the
30 procedure of postponing prosecution, either temporarily or
31 permanently, at any point in the judicial process from the point at
32 which the accused is charged until adjudication.

33 (2) A pretrial diversion program shall utilize existing resources
34 available to current or former members of the United States military
35 to address and treat those suffering from sexual trauma, traumatic
36 brain injury, post-traumatic stress disorder, substance abuse, or
37 mental health problems as a result of military service.

38 SEC. 2. If the Commission on State Mandates determines that
39 this act contains costs mandated by the state, reimbursement to
40 local agencies and school districts for those costs shall be made

1 pursuant to Part 7 (commencing with Section 17500) of Division
2 4 of Title 2 of the Government Code.

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